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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#5

[redacted]

DATE: MAR 16 2012 OFFICE: MOUNT LAUREL, NEW JERSEY File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated July 18, 2009.

On appeal counsel asserts that the applicant's lawful permanent resident father would suffer extreme hardship if the waiver is not granted. See *Form I-290,* Notice of Appeal or Motion, received August 13, 2009.

The record contains, but is not limited to: Form I-290B and counsel's brief; Forms I-601, I-485 and denials of each; hardship affidavit; psychoemotional assessment; applicant's affidavit; and Form I-130. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that in or about December 1994, the applicant entered the United States by presenting the passport and visa of another individual. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not dispute inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an

> alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's father is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*,

21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant's father is a 64 year old native and citizen of Ecuador and lawful permanent resident of the United States. He states that he depends and relies upon the applicant for many things and can talk with him about things he is unable to discuss with anyone else. See *Hardship Affidavit*, dated October 17, 2008. The applicant's father states that neither his wife nor his son, [redacted] are able to "be there" for him like the applicant. *Id.* He states that the applicant calls him at least three times a week to make sure he is well and taking the right medicine, and when he is sick the applicant helps him make important decisions and deal with the emotional stress and problems in his everyday life that seem to continually overwhelm him. *Id.* The applicant states that he and his father have a special relationship and he is the favorite son. See *Applicant's Affidavit*, dated June 19, 2009. He states that his removal would cause his father extreme hardship as his brother is too busy and he does not believe his stepmother, who "works too many hours," is "emotionally capable of dealing with" his father's "many problems." *Id.* The record contains no documentary evidence supporting these assertions.

The applicant submits a [redacted] dated June 12, 2009, in which [redacted] asserts that the applicant's father's overall health and functioning are fair, yet show a number of age-related ailments, and he has noticed incremental short-term memory and concentration problems. *Id.* [redacted] asserts that the "visible cognitive decline should be further studied neurologically." *Id.* The record contains no documentary evidence that the applicant's father has been referred to or treated by a neurologist. [redacted] diagnoses the applicant's father with "Adjustment Disorder with Mixed Anxiety and Depressed Mood, including anxious-depressogenic thoughts, inner tension, sleep and appetite

disturbances, and lingering mental worries about the future of his son." *Id.* While the AAO has considered [redacted] assessment, the evidence does not establish that the applicant's father's emotional/psychological difficulties go beyond the normal hardships associated with inadmissibility of a family member. The AAO notes that the assessment is based on self-reporting by the applicant and his father. The AAO recognizes that while the applicant's father may share a closer bond with the applicant than with his wife or other sons, the evidence is insufficient to establish that he would suffer uncommon or significant hardship in the applicant's absence.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's father. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's father addresses relocation-related hardship with [redacted] including that the applicant has lived in the United States since he was 18-years-old and his job, means of subsistence, contacts and work opportunities are in the U.S. The record contains no documentary evidence that the applicant is or has ever been employed in the United States. In [redacted] assessment, the applicant's father also expresses concerns about Ecuador including public insecurity, growing socio-political unrest, increased gang and drug-related violence, previously unseen violent crimes, high rates of unemployment and salaries tenfold lower than in the U.S. Given that the assertions relayed in [redacted] assessment are based on self-reporting by the applicant's father, and that the record contains no documentary evidence addressing country conditions in Ecuador, the AAO will not speculate in this regard. Counsel asserts that the applicant's father would lose his lawful permanent resident status if he relocates to join his son. While the AAO recognizes that such loss of status could indeed result, the evidence does not establish significant hardship therefrom to the applicant's father.

Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's lawful permanent resident father would suffer extreme hardship were he to relocate to Ecuador to be with the applicant.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.